IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.795 of 2007

Elumalai @ Chinnavar .. Petitioner

Vs

1. State rep. by its
   Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents to produce the detenue viz. Elumalai @ Chinnavar, Son of Marimuthu, who is now detained in Central Prison, Puzhal, Chennai -66 in pursuance of the order of the 2nd respondent on 17.4.2007 in Memo No.160/BDFGISSV/2007, before this Court, call for the records set-aside the order and set at liberty forthwith.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, Elumalai @ Chinnavar, son of Marimuthu, who was incarcerated by order dated 17.4.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers

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and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, and confined at Central Prison, Chennai, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention in Memo No.160/BDFGISSV/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. The order of detention dated 17.4.2007 was passed on the basis of ground case in Crime No.150 of 2007 for alleged commission of offences under Sections 341, 323, 307 and 506(ii) of I.P.C. The allegation against the detenu was that on 21.3.2007 at about 13.00 hours, when one Velu and Noor Murugan were proceeding to take lunch, the detenu was found standing in front of the metal company, where Velu was working. Velu asked the detenu to leave the spot as the police used to enquire him for the theft committed by the detenu. Annoyed with this, the detenu pushed down Velu, took out a knife from his hip and attempted to cut over his head. Velu warded off the attack. However the knife fell over his neck and caused bleeding injury. Velu raised hue and cry. The public nearby and the other employees of the metal company tried to apprehend the detenu. But, the detenu threatened them at the point of knife. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu created terror and panic at the spot. In this regard, a case was registered and the detenu was arrested on 22.3.2007 and remanded to judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases pending against the detenu in Crime Nos.395/2000, 419/2001, 1453/2005, 8/2006, 1018/2006 and 149/2007 on the file of P4 Basin Bridge Police Station for the offence punishable under Sections 457, 380, 394, 506(ii), 379, 341, 323, 324, 307 and 384 IPC and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the detenu in his representation dated 30.5.2007 that he was taken by the police on 19.3.2007 not on 22.3.2007, as mentioned in the detention order, was not considered in the rejection order dated 21.6.2007.

5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the

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detenu was arrested on 22.3.2007 with respect to the ground case, in the representation of the detenu dated 30.5.2007, the detenu had specifically stated that he was taken on 19.3.2007 by the Police of P4 Basin Bridge Police Station and was kept under their custody till 22.3.2007 and thereafter, a false case was foisted against him. However, the second respondent, while passing the order of rejection rejecting the representation of the detenu, had not considered the contention raised by him as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention is vitiated and the same is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR
To
1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai 600 008.

3. The Superintendent
   Central Prison, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary (Law and Order)
Fort St. George, Chennai -9.

+1cc to Mr.S.Swamidoss Manokaran, Advocate Sr 58327

KSJ (CO)
km/6.10.

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